313 U.S. 1

MAY 6 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 1020

PRISCILLA BAKING COMPANY ET AL.

v.

COMMISSIONER OF INTERNAL REVENUE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

JOSEPH A. LETOURNEAU,
ATTORNEY IN FACT
WITH POWERS OF ATTORNEY,
for Petitioners.

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Preliminary Statement.

The undersigned, Joseph A. Letourneau, is not an attorney at law, but is acting as attorney-in-fact, with power of attorney. He became an American citizen 52 years ago (October 1888). At that time he was given to understand that under the United States Constitution, the Government will not confiscate the property of any citizen without due compensation. Since becoming a citizen, he has labored faithfully and honestly and has built up the business of the Priscilla Baking Company and its affiliates, all of which are now owned by him and his two sons. He was not represented by counsel in the lower courts nor did counsel take part in the preparation of the petition for Certiorari or of this brief.

When the petition and record were filed in this court the clerk suggested that under the rules it was necessary that the Appearance of an attorney must be filed before the case could be docketed and an attorney has permitted his name to be used for that purpose. If the petition should be granted however, the petitioner will be properly represented by counsel.

This brief in support of the petition for Certiorari is with the exception of this preliminary statement, the same as that which was prepared by the undersigned and submitted to the Circuit Court of Appeals for the First Circuit.

While your petitioner now realizes that this case might be hopeless it nevertheless prays this Honorable Court to allow the petition and grant some relief by referring the case back to the lower court or to the United States Processing Tax Board of Review for a fair and just trial on the merits.

Statement of the Cases.

Through the instrumentality of the Agricultural Adjustment Act, the petitioners were unjustly and unlawfully de-

prived of their property with respect to certain assessments or taxes imposed on flour, sugar, pork and pork products as enumerated in the transcript of record. The Agricultural Adjustment Act having been declared unconstitutional on January 6, 1936.

THE AMOUNTS INVOLVED.

The amounts involved as shown on transcript of record are as follows:

Flour: Priscilla Baking Co.,	Exhibit B-2		$ 1.38
" "	" B-3		5.52
" "	" B-4 A, B & C		1135.74
" "	" B-6		38.64
Sugar: " "	" B-5 A, B & C		315.18
Priscilla Baking Lunch Co.,	" B-1		31.03
" " " "	" B-2 A & B		100.26
Pork Products: Ham, Frankfurts, Sausage, Fresh Pork, Shoulders, Spare Ribs, Bacon & Pigs' Knuckles.	Priscilla Baking Lunch Co.	Exhibits: B-3, A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA & BBB.	591.97
" " "		Exhibits: B-4, A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y.	290.42
Pork	Priscilla Baking Co.	B-1	49.45
"	"	B-7	8.60
	Total		2568.19

Said amount of $2568.19, plus interest and costs is hereby claimed by the petitioners.

SPECIFICATIONS OF EFFORTS MADE TO ADJUST CLAIMS.

As shown on pages 9, 10, 11, 12, 13 & 14 (Priscilla Baking Co.) and pages 55, 56, 57 & 58 (Priscilla Baking Lunch Co.) of transcript of record, our claims were rejected in full by the Commissioner of Internal Revenue.

We then consulted three different attorneys of good repute and ability named:

1—James S. Ballantyne, 43 Roxbury Street, Roxbury, Massachusetts. Mr. Ballantyne did not care to act for us.

2—A. John Serino, 20 Pemberton Square, Mass. Mr. Serino stated that we had no right to sue the Government.

3—Joseph F. Lockett, 50 Congress Street, Boston, Mass. Mr. Lockett wanted $100. to go to Washington and $300. as a retainer. After several interviews in which he failed to show any knowledge with respect to the handling of these cases, we decided not to employ him.

Next, we consulted Mr. John R. Salmon who has charge of Processing Taxes for Internal Revenue in Boston, Mass. Mr. Salmon gave us no encouragement.

Our next step was in entering a suit in the United States District Court of Boston, Mass. V. W. M. Welch, former Collector of Internal Revenue in Boston, Mass. We were turned down on technicalities.

We then appealed through the United States Circuit of Appeals in Boston, Mass. (No. 3439 of 1938, October Term), where the decision was to the effect that we should have applied to a tribunal empowered to handle these claims We quote the decision in part as follows:

> "Section 906 of said Agricultural Adjustment Act prohibits an action to recover a refund of processing taxes collected under the act to be maintained in the District Courts, but provides a Special Board to con-

sider and pass upon all controversies pertaining to such refunds, with provision for review of its decisions by the Circuit Court of Appeals and the Court of Appeals for the District of Columbia. *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337.

The plaintiff has clearly misconceived his remedy, if any.

The judgment will be:

The judgment of the District Court is affirmed."

Through the kindness of Mr. Arthur I. Charron, Clerk of the United States Circuit Court of Appeals, Boston, Massachusetts, we discovered that we should have applied to the United States Processing Tax Board of Review for redress.

It is rather strange that the three attorneys consulted, and also Mr. John R. Salmon of Internal Revenue knew nothing about the United States Processing Tax Board of Review.

Our proceedings through the United States Processing Tax Board of Review were carried on in a brutal and arbitrary manner on their part, with the result that we are now appealing to this honorable court.

The functions of the United States Processing Tax Board of Review are apparently of the nature of prosecutor, judge, jury and executioner. They compelled us to furnish 875 pages of details (5 sets of copies). We were also deluged with an assortment of rules and regulations, instructions and limitations of more than forty pages.

We were unable to secure the proper forms from Internal Revenue, see page 32 of transcript of record. However, a few weeks after September 15, 1936, we received from Internal Revenue Forms 945 and 945A, see pages 35 to 46 inclusive of transcript of record, which we filed in part, under oath, although we could not understand the value or the necessity of such forms.

COMPARISON OF PRICES.

Flour bought prior to Agricultural Adjustment Act, see:

Exhibit 1 Price $4.00 per barrel.

For month of June 1933.

EXHIBIT 1

Flour bought from:
Sands, Taylor and Wood Co.,
28 Fitchburg Street,
Somerville, Mass.

By: Priscilla Baking Co.,
12-14 Chadwick Street,
Roxbury District,
Boston, Mass.

DURING THE MONTH OF JUNE, 1933.

Priscilla Baking Co. Voucher No.	Date Bought 1933	Barrels Bought	Amount of Invoice.	When Paid 1933
6603	June 28	70	$269.50	July 1, 8, 15, 22, 29.
"	"	35	157.50	Aug. 5, 12, 19, 26.
				Sept. 2, 9.

Comparative average price July 9, 1933 to January 6, 1936, see transcript of record, pages 16, 17, 18, 19, 23 and 24

$6.50 per barrel.

Pork bought prior to Agricultural Adjustment Act, see:

Exhibit 2 Price $8.50 per 100 lbs.

For month of September 1933.

EXHIBIT 2

Pork bought from:
E. N. West Co.
65 Faneuil Mkt.
Boston, Mass.

By: Priscilla Baking Co.,
12-14 Chadwick Street
Roxbury District,
Boston, Mass.

DURING THE MONTH OF SEPTEMBER, 1933.

Priscilla Baking Co., Voucher No.	Date Bought 1933	Lbs. Bought	Amount of Invoice	When Paid 1933
6610	Sept. 11	100	$8.50	Sept. 16

Comparative average price November 5, 1933 to January 6, 1936, see transcript of record page 15.

$14.00 per 100 lbs.

Sugar bought prior to Agricultural Adjustment Act, see:

Exhibit 3 Price $4.30 per 100 lbs.

For month of May 1934.

EXHIBIT 3

Sugar bought from:
Myer Wolf Food Co.
87 Commercial Street,
Boston, Mass.

By: Priscilla Baking Co.,
12-14 Chadwick Street,
Roxbury District,
Boston, Mass.

DURING THE MONTH OF MAY, 1934.

Priscilla Baking Co. Voucher No.	Date Bought	Lbs. Sugar Bought	Amount of Invoice	When Paid
	1934			1934
7051	May, 10	275	$12.51	May, 19
"	"	717	30.83	"
7072	21	706	30.36	29
"	"	275	12.51	"
7088	28	696	29.23	June, 7

Comparative average price June 8, 1934 to January 6, 1936, see transcript of record pages 20, 21 and 22.

$4.85 per 100 lbs.

Pork products bought prior to Agricultural Adjustment Act, see:

EXHIBITS 4 AND 4A

Average prices for October 1933

Ham,	15 Cents Per Pound
Frankfurts,	13 " " "
Sausage,	13 " " "
Fresh Pork,	11¾ " " "
Shoulders,	9⅜ " " "
Spare Ribs,	9 " " "
Bacon,	15 " " "
Pigs' Knuckles	9¼ " " "

EXHIBIT 4.

Hams, Frankfurts, Sausage, Fresh Pork, Shoulders, Spare Ribs, Bacon and Pigs' Knuckles, Bought from:
E. N. West Co.
65 Faneuil Mkt.,
Boston, Mass.

By: Priscilla Baking Lunch Co.,
17 Rutland Square,
Boston, Mass.

During the Month of October 1933.
N. B. Weights in Pounds and Ounces.

Date of Invoice.	Lbs. Ham.	Lbs. Frank-furts.	Lbs. Sausage.	Lbs. Fresh Pork.	Lbs. Should-ers.	Lbs. Spare Ribs.	Lbs. Bacon.	Lbs. Pigs' Knuckles.	Amt.	When Paid.
P. B. L. Co. Voucher No. 6787. Invoices October 2, 3, 4, 5, 6, 1933.										
1933										1933
Oct. 2	15.7								$2.28	Oct. 7
"			5						.65	"
"						6.8			.52	"
3		5							.70	"
"				17.8					2.02	"
6	12.8								1.81	"
"				9.8					1.10	"
2				9.8					1.10	"
5							6.4		.94	"

(Exhibit 4 continued on page 10)

(Exhibit 4 continued from page 9)

P. B. L. Co. Voucher No. 6814.
Invoices October 7, 9, 10, 11 and 13.

Date of Invoice.	Lbs. Ham.	Lbs. Frankfurts.	Lbs. Sausage.	Lbs. Fresh Pork.	Lbs. Shoulders.	Lbs. Spare Ribs.	Lbs. Bacon.	Lbs. Pigs' Knuckles.	Amt.	When Paid.
7						21.			2.10	14
"		5							.70	"
"			5						.65	"
"					7.				.63	"
9				7.12					.93	"
10	13.11								2.06	"
"		5							.70	"
11		5							.70	"
"			5						.65	"
"				10.12					1.29	"
13				11.12					1.41	"
7	8.4								1.82	"
"					8.				.72	"
9					8.				.76	"
"				9.4					1.11	"
11	11.12								1.76	"
"			5						.65	"
"				10.8					1.26	"
13				10.					1.20	"
"	13.8								1.96	"
11			5						.65	"
C.F.	75.2	20	25	96.8	23.	27.8	6.4	....		

Date of Invoice.	Lbs. Ham.	Lbs. Frank-furts.	Lbs. Sausage.	Lbs. Fresh Pork.	Lbs. Should-ers.	Lbs. Spare Ribs.	Lbs. Bacon.	Lbs. Pigs' Knuckles.	Amt.	When Paid.
B.F.	75.2	20	25	96.8	23.	27.8	6.4	....		

EXHIBIT 4A.

P. B. L. Co. Voucher No. 6838.
Invoices October 14, 16, 17, 18, 19 and 20.

1933										1933
Oct. 16					7.4				$ .73	Oct. 21
17				9.12					1.17	"
18							6.12		1.01	"
19				8.8					1.02	"
14			5						.65	"
"					8.8				.81	"
16	13.10								2.12	"
"		5							.70	"
17								4.12	.38	"
18	11.8								1.73	"
"			5						.65	"
20			5						.65	"
"				15.8					1.86	"
14					7.8				.72	"
"				10.8					1.26	"
16	11.8								1.73	"
"						6.4			.56	"
17			5						.65	"
19				9.0					1.08	"
16						8.			.64	"
17	11.6								1.77	"
20	12.								1.80	"

(Exhibit 4A continued on page 12)

(Exhibit 4A continued from page 11)

P. B. L. Co. Voucher No. 6868.
Invoices October 21, 23, 24, 25, 26 and 27.

23			5						.65	28
"					6.12				.61	"
24						6.8			.52	"
23		5							.70	"
25	13.13								2.15	"
27	10.								1.45	"
"		5							.70	"
"			5						.65	"
21	14.								2.03	"
"				9.0					1.04	"
24					7.8				.68	"
"				9.12					1.17	"
25			5						.65	"
21	9.8								2.14	"
27	11.								1.60	"
"			5						.65	"
	193.7	35	65	168.8	60.8	48.4	13.	4.12		

Comparative average from November 5, 1933 to January 6, 1936, see: transcript of record pages 62 to 249 inclusive.

Ham,	25½	Cents	Per	Pound
Frankfurts,	15½	"	"	"
Sausage,	15½	"	"	"
Fresh Pork,	18	"	"	"
Shoulders,	15	"	"	"
Spare Ribs,	12½	"	"	"
Bacon,	24	"	"	"
Pigs' Knuckles	12¾	"	"	"

ARGUMENT.

On pages 8 to 15 inclusive and 55, 56, 57 and 58 of the transcript of record, are shown the rejections of our claims by the Commissioner of Internal Revenue, Guy T. Helvering, and on pages 29 and 250 are shown "Motions to Dismiss."

It is our belief that the rejections by the Commissioner of Internal Revenue, and the "Motions to Dismiss" by J. P. Wenchel, chief counsel are *irrelevant,* inasmuch as we implore as our right and purpose that part of the United States Constitution which reads in part as follows: Fifth Amendment, "That no private property be taken for public use without just compensation."

And also inasmuch as the Agricultural Adjustment Act was declared unconstitutional on January 6, 1936.

It is true that we did not pay the taxes direct to the Government. The taxes were paid to our vendors, who in turn must have paid their vendors.

Our vendors did not receive any refunds, they simply passed unto us what was passed unto them.

In the final analysis we were made to pay the taxes, without any chance whatsoever of passing the same unto our customers.

Through the instrumentality of the Government, these taxes were passed unto us in a clandestine manner. See pages 24, 25, 26, 27 and 28 of the transcript of record, for letters from our vendors.

CONCLUSION.

Priscilla Baking Co. and Priscilla Baking Lunch Co. are two small corporations that had to weather the storm of the depression.

We have kept some thirty persons employed all the time, all married except one, thereby helping the Government in reducing its unemployment problem.

During the period of 12 years, we were compelled to discharge 68 employees on account of dishonesty, although we pay $2.00 to $4.00 per week more in wages than our competitors.

We also discharged 29 employees on account of intoxication.

And to cap the climax, our places of business were held up by bandits exactly 13 times.

The $2568.19 in processing taxes imposed upon us by the Government (plus about $1500.00 loss through N.R.A., no way of redress) are four times more than we have lost through dishonesty, drunkenness and banditry.

No commiseration has been shown by the Government in trying to adjust this horrible mess.

Any responsible and reputable corporation in the United States would have acted differently.

Respectfully submitted,

PRISCILLA BAKING CO., ET AL.

JOSEPH A. LETOURNEAU,
President and Attorney-in-Fact with Power of Attorney.